**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929**

**Ins.APP.No. 51 of 2003()**
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**IC.6/1991 of E.I.COURT, KOLLAM**
**.....**

**APPELLANT/APPELANT IN I.C.A.NO.6/91**
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**E.SUKUMARAN, SHEEJA BHAVAN,**
**MADHAVAPURAM, TITANIUM P.O., TRIVANDRUM-21.**

**BY ADV. SRI.M.V.JOSEPH**

**RESPONDENTS: RESPONDENT IN I.C.A.NO.6/91**
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**THE REGIONAL DIRECTOR, E.S.I.CORPORATION**
**TRICHUR.**

**BY ADV. SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPN**

**THIS INSURANCE APPEALS HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

# K. PADMANABHAN NAIR, J.

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**INS. APPEAL NO.51 OF 2003**

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**Dated this the 27th day of June, 2007**

**J U D G M E N T**

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Appellant/**Workman in an appeal filed under Section 54A of the Employees' State Insurance Act, 1948 before the Insurance Court , Kollam, is the appellant. He sustained an employment injury on 12.6.1989. He sustained fracture of cervical bone. According to the appellant due to the injury he was admitted in the hospital and his condition became worse. He claimed disablement benefit for treating his case as total disability. The Medical Board assessed his loss of earning and fixed the same as 10% permanently. That was challenged by the appellant before the Medical Appellate Tribunal, Kollam. The Appellate Tribunal enhanced the permanent disability to 60%. Dissatisfied with that decision, appellant filed Insurance Appeal No.6 of 1991 before the Insurance Court, Kollam. The same was dismissed. Challenging the said order, appellant filed M.F.A. No.533 of 1994 before this Court. This Court set aside the order impugned and remanded the case for fresh disposal in accordance with law. After remand also the**

Tribunal passed an order disallowing the claim of the appellant for 100% disability and fixed the same at 65%. Hence this appeal challenging the judgment in Insurance Appeal No.6 of 1991.

2. The only question arising for consideration is whether the claim of the appellant that his case shall be treated as 100% disability is to allowed. The Medical Appellate Tribunal by Exhibit B2 decision fixed the disablement of the appellant at 60%. Appellant produced Exhibits A1 to A10 to show that he had undergone prolonged treatment. He examined P.Ws.1 and 2. P.W.2 is the Senior Manager of the Company wherein the appellant was employed at the time of the accident. Evidence of P.W.2 shows that after the accident appellant did not attend to the work in the establishment. The evidence of P.W.2 was rejected on the ground that he did not give evidence to the effect that the appellant left the company due to the injury sustained in the accident. Whether the appellant left the Company due to his incapacity is a matter for inference based on the evidence adduced. Even if P.W.2 gives oral evidence to that effect, the

**case cannot be decided on the oral evidence. In Exhibit A12 P.W.2 had stated that the appellant reported sick on 21.11.1990 and thereafter he did not report for duty even on a single day. Exhibit A13 is the copy of the memorandum of settlement arrived at between the management and the Union. Initially appellant was terminated from service. That termination was subsequently converted as voluntary retirement. That was because of his disability to do the work. In Exhibit A11 certificate it was stated that the appellant was unable to do any manual labour. Material on record further shows that the appellant had to leave the establishment because of the employment injury. Hence the disablement of the appellant is to be treated as 100% permanently, though the Medical Appellate Tribunal has fixed the same at 60%.**

**In the result, the appeal is allowed. Judgment passed by the Insurance Court, Kollam and the decision of the Medical Appellate Tribunal, Kollam are set aside. It is declared that the disablement of the appellant is 100%. Respondents are directed to treat the appellant as 100% disabled and give him**

**all the eligible disablement benefits in accordance with law. It goes without saying that this order is subject to the provisions regarding review contained in Chapter V of the Act.**

**K. PADMANABHAN NAIR, JUDGE.**

**vsv**

**K. PADMANABHAN NAIR, J.**

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**M.F.A.**

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**J U D G M E N T**

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**22ND JUNE, 2007**